

AN ORDINANCE

07-0-1521

BY COUNCILMEMBER NATALYN ARCHIBONG



TO AMEND CHAPTER 138 OF THE CODE OF ORDINANCES OF THE CITY OF ATLANTA SO AS TO CREATE A NEW ARTICLE VIII TO BE ENTITLED "OUTDOOR DINING AREAS"; TO AMEND ARTICLE II OF CHAPTER 138 SO AS TO CREATE A NEW DIVISION 8 TO BE ENTITLED "OUTDOOR DINING AREAS"; TO ESTABLISH PROCEDURES FOR THE AUTHORIZATION OF RESTAURANTS THAT WISH TO PROVIDE OUTDOOR DINING SERVICES; AND FOR OTHER PURPOSES.

WHEREAS, restaurants that maintain outdoor dining areas provide an interesting streetscape environment, and encourage pedestrian activity; and

WHEREAS, the City of Atlanta has no established procedure for the granting of permits to restaurants for the authorization of outdoor dining areas; and

WHEREAS, it is the desire of the Atlanta City Council that there be an established procedure for granting permits to those restaurants wishing to provide outdoor dining areas.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA as follows:

SECTION 1: That Chapter 138 of the Code of Ordinances be amended so as to create a new Article VIII entitled "Outdoor Dining Areas", which reads as follows:

DIVISION 1. GENERALLY

Sec. 138-256. Title.

This Article shall be known and may be cited as the Atlanta Outdoor Dining Ordinance.

Sec. 138-257. Scope.

(a) This article is intended to be the framework within which all outdoor dining facility applications, as "outdoor dining" is defined herein, are approved and regulated.

(b) It shall be unlawful for any business establishment within the corporate limits of the city to operate an outdoor dining facility as defined herein without complying with the procedures set forth in this chapter, as well as all other applicable provisions of this Code.

(c) Additional outdoor dining operating guidelines, policies, procedures, and permit and encroachment agreement forms will be adopted administratively by the Commissioner of the Department of Public Works and enforced by the city. Such administrative requirements shall include, but not necessarily be limited to, the following:

- (1) Proof of liability insurance naming the City as an additional insured;
- (2) Special site conditions or requirements;
- (3) Minimum design and signage requirements;
- (4) Limitations on hours of operations;
- (5) Adequate setbacks and clearances to permit safe pedestrian uses of the public right-of-way;

Sec.138-258. Applicable ADA and city zoning requirements.

All outdoor dining areas approved and established under this article must be fully compliant with the Americans with Disabilities Act (“ADA”) Accessibility Guidelines and the zoning requirements set out in the Atlanta Code of Ordinances found at Part 16, Chapter 32, titled “NC Neighborhood Commercial District Regulations”.

Guide dogs and Service dogs, as defined in Section 142-63 of the Atlanta Code of Ordinances, and as referenced in Title III, Section 36.104, of the ADA, shall not be allowed to encroach upon or restrict movement in the public right-of-way or sidewalk area.

Sec.138-259. Applicable city noise ordinance requirements.

All outdoor dining areas approved and established under this article are subject to the noise ordinance requirements set out in the Atlanta Code of Ordinances found at Article IV of Chapter 74 titled “Noise Control”.

Sec.138-260. Outdoor dining permit required.

Outdoor dining is not allowed without an outdoor dining permit issued by the city as set forth in this Article.

Sec.138-261. Applicable city encroachment ordinance requirements.

All outdoor dining areas approved and established under this article are subject to the encroachment ordinance requirements set out in the Atlanta Code of Ordinances at Article II of Chapter 138 titled "Streets, Sidewalks and Other Public Places".

In those instances where a portion of an outdoor dining area is to be located within the public right-of-way, the applicant must apply for permission from the city to encroach into the public right-of-way by completing and filing an encroachment agreement application with the Department of Public Works.

Sec. 138-262. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Application means a written request on forms supplied by the Department of Public Works which set forth the information required to be provided by this chapter.

City means the City of Atlanta, Georgia, a municipal corporation of the State of Georgia.

Encroachment agreement means an agreement arranging the terms under which an outdoor dining encroachment shall be allowed to exist within the public right-of-way.

Encroachment agreement fee means the fee required to be paid pursuant to this article for the issuance of an encroachment agreement to allow outdoor dining in the public right-of-way. The encroachment agreement fee, in the amount of \$, shall be assessed to recover the direct and indirect costs associated with said issuance, and shall not exceed the administrative costs of regulation.

Outdoor dining area means a space in which an applicant serves food and beverages as part of the operation of the restaurant. An outdoor dining area must be located directly in front of a restaurant and the width of such area shall not exceed the width of the restaurant. An outdoor dining area shall contain no more than 50 percent of the premises' total seating capacity. The space within an outdoor dining area shall be enclosed within a clearly delineated area, which is surrounded by a continuous physical barrier no less than 36 inches and no more than 40 inches in height. An outdoor dining area shall have a single point of ingress and egress that is controlled by the applicant. Music and/or live entertainment shall not be provided within an outdoor dining area.

Permit means an authorization which grants permission to operate an outdoor dining area within any public right-of-way, and which is subject to the conditions set forth in chapter 138 of this Code.

Permit fee means the fee required to be paid pursuant to this article for the issuance of a permit to allow outdoor dining. The permit fee, in the amount of \$_____, shall be assessed to recover the direct and indirect costs associated with said issuance, and shall not exceed the administrative costs of regulation.

Restaurant means any public place which derives at least 50 percent of its total annual gross food and beverage sales from the sale of prepared meals or food, and which is kept, used, maintained, advertised and held out to the public as a place where meals are actually and regularly served, without sleeping accommodations, such place being provided with adequate and sanitary kitchen and dining room equipment and seating capacity of at least 40 people, having employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for its guests. At least one meal per day shall be served at least six days per week, with the exception of holidays, vacations and periods of redecorating, and the serving of those meals shall be the principal business conducted.

DIVISION 2. PERMITS

Sec. 138-263. Authority to issue permits.

The Commissioner of the Department of Public Works is hereby authorized and empowered to issue outdoor dining permits to owners or operators of restaurants that wish to operate an outdoor dining area.

The Department of Public Works shall approve and adopt written administrative guidelines for the permit application process, for the issuance and maintenance of a permit, and for procedures related to the denial of a permit application and the revocation and suspension of permits that have been previously issued.

Adverse decisions regarding the suspension, revocation or denial of a permit issued under this section may be appealed, on forms to be provided by the Department of Public Works, to the license review board within 20 days of the applicant or permit holder's receipt of notice as described herein. Such notice shall be mailed to the permit holder at least five calendar days prior to the date of the hearing. The notice shall be mailed to the address shown on the application by registered U.S. mail.

Sec. 138-264. Application for permit.

Every owner or operator of a restaurant desiring to operate an outdoor dining area shall submit an application for an outdoor dining area permit to the Department of Public Works. Each such application shall state the name of the applicant, the

name and address of the restaurant, the proposed area to be used for the outdoor dining area, the hours and days of operation of the outdoor dining area, and shall be accompanied by a fully dimensioned space-use plan showing the locations, number, arrangement, and size of the tables and chairs to be located in the outdoor dining area, the size and locations of the pedestrian diverters planned to demarcate the outdoor dining area, the location of the entrance to the establishment, and the nature and location of any existing sidewalk obstructions.

Sec. 138-265. Authority to enter into encroachment agreements.

In those instances where the proposed outdoor dining area will result in an encroachment into the public right-of-way, the Commissioner of the Department of Public Works is hereby authorized and empowered to accept encroachment applications from applicants seeking outdoor dining permits, and to determine whether such applications qualify for the issuance of an encroachment agreement based on applicable zoning and related administrative requirements.

If a favorable administrative determination is made, the Department of Public Works is authorized to enter into an encroachment agreement with said applicant, provided all other administrative requirements have been met.

Any encroachment agreements that are issued are revocable based on written administrative guidelines established by the Department of Public Works.

Sec. 138-266. Application for encroachment agreement.

Every owner or operator of a restaurant desiring to operate an outdoor dining area which, by design, will encroach into the public right-of-way, shall submit an outdoor dining area encroachment agreement application to the Department of Public Works. Each such application shall state the name of the applicant, the name and address of the restaurant, and the area of the proposed encroachment.

Sec. 138-267. Issuance of permit and where applicable, encroachment agreement.

The Department of Public Works shall review a submitted permit application on a timely basis. If said application conforms to all requirements set forth in this division and in the administrative guidelines established by the Department of Public Works, the Department of Public Works shall issue an outdoor dining permit to the applicant.

No permit issued under this division shall become effective until the permit applicant has signed the permit and has delivered to the Department of Public Works proof of insurance to the limits required by Section 138-268 of this division and has paid all application and related fees.

In those instances where the outdoor dining area will encroach into the public right-of-way, no permit shall be issued under this division until the applicant has applied for and obtained an encroachment agreement with the Department of Public Works.

Sec. 138-268. Conditions and Restrictions.

The issuance of permits by the Department of Public Works under this division shall be subject to the guidelines set forth by the Department of Public Works and the following conditions and restrictions:

(a) Neither the city, nor any of its officers, agents, or employees shall be liable for any damages, claims or liability resulting to persons or property from the applicant's operation of an outdoor dining area. Each permittee shall, at his or her own expense, maintain in full force and effect an insurance policy or policies issued by an insurance company or companies satisfactory to the city's Risk Management Department, and with an A.M. Best rating of not less than A-.

(b) Said policy or policies shall afford general liability insurance covering all operations, including, but not limited to premises, products, personal injuries and automobiles and injury to property for a single limit of not less than \$2,000,000.00 applying to said bodily injuries, personal injuries and property damage or a combination thereof. The permittee shall also maintain liquor liability insurance in an amount not less than \$2,000,000.00. Said policy or policies shall include the city and its officers, agents, and employees jointly and severally as additional insureds and shall apply as primary insurance and shall stipulate that no other insurance effected by the city will be called on to contribute to a loss covered hereunder. Said policy or policies shall provide thirty (30) days written notice to the city at the following address if the policy or policies should be cancelled or materially changed:

City of Atlanta, Georgia
Commissioner of Public Works
Suite 4700
Atlanta, Georgia 30303

Sec. 138-269 Encroachment agreement not deed or easement.

The issuance of an encroachment agreement by the city under this division shall not constitute a deed or grant of an easement by the city and shall be subject to suspension or revocation by the Department of Public Works when it is determined that the permittee has violated any restriction and/or condition set forth in this division, or any rule or administrative requirement established by the Department of Public Works. Both the encroachment agreement and the permit

issued under this division shall be automatically terminated should the insurance policy or policies required under Section 138-268 lapse or otherwise cease to be effective.

Sec. 138-270 Penalties; Other remedies.

The establishment of an outdoor dining area by a restaurant within the corporate limits of the city without a permit as required by this division shall constitute an infraction punishable by a fine as set forth in Section 1-8 of Chapter 1 of the Code of Ordinances. The non-payment of such fine within thirty days of notice by registered mail of such imposition shall cause the city to revoke the business license of the owner or operator.

SECTION 2: That Article II of Chapter 138 of the Code of Ordinances be amended so as to create a new Division 8 entitled "Outdoor Dining Areas", which reads as follows:

DIVISION 8. Outdoor Dining Areas

Sec. 138-62. Outdoor dining areas.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Encroachment agreement means an agreement arranging the terms under which an outdoor dining encroachment shall be allowed to exist within the public right-of-way.

Encroachment agreement fee means the fee required to be paid pursuant to this article for the issuance of an encroachment agreement to allow outdoor dining in the public right-of-way. The encroachment agreement fee, in the amount of \$_____, shall be assessed to recover the direct and indirect costs associated with said issuance, and shall not exceed the administrative costs of regulation.

Outdoor dining area means a space in which an applicant serves food and beverages as part of the operation of the restaurant. An outdoor dining area must be located directly in front of a restaurant and the width of such area shall not exceed the width of the restaurant. An outdoor dining area shall contain no more than 50 percent of the premises' total seating capacity. The space within an outdoor dining area shall be enclosed within a clearly delineated area, which is surrounded by a continuous physical barrier no less than 36 inches and no more than 40 inches in height. An outdoor dining area shall have a single point of

ingress and egress that is controlled by the applicant. Music and/or live entertainment shall not be provided within an outdoor dining area.

Restaurant means any public place which derives at least 50 percent of its total annual gross food and beverage sales from the sale of prepared meals or food, and which is kept, used, maintained, advertised and held out to the public as a place where meals are actually and regularly served, without sleeping accommodations, such place being provided with adequate and sanitary kitchen and dining room equipment and seating capacity of at least 40 people, having employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for its guests. At least one meal per day shall be served at least six days per week, with the exception of holidays, vacations and periods of redecorating, and the serving of those meals shall be the principal business conducted.

(b) *Restrictions; permit required.* It shall be unlawful to erect or maintain an outdoor dining area that encroaches into the public right-of-way except by issuance of an encroachment agreement issued by the commissioner of public works. Any violator of this section shall be held accountable as provided for in the penalty section of this chapter. Any violator of this section shall also be subject to an order by the commissioner of public works to remove any outdoor dining area found to be in violation of this section. Failure of the owner of the outdoor dining area to remove the outdoor dining area within 30 days of being issued a written order of removal by the commissioner of public works shall authorize the commissioner of public works to remove the outdoor dining area, at the expense of the owner of the outdoor dining area. Applications for permits shall be in the form and shall contain such information as shall be required by the commissioner of public works. All outdoor dining areas shall be erected and maintained by the permit holder in conformity with the city's zoning ordinance, and this section shall be in addition to and shall in no way modify or replace the city's zoning ordinance and all permits required therein.

(c) *Agreement for use of public right-of-way.* Permits for outdoor dining areas erected or maintained on the right-of-way of a public road or street shall only be issued upon a written agreement being entered into by the city and the applicant for an outdoor dining area permit. No permit for any outdoor dining area in the public right-of-way shall be authorized or issued unless the property immediately adjacent to such outdoor dining area is zoned to allow eating and drinking establishments pursuant to part 16 of this Code.

(d) *Design plans; location.* Before an outdoor dining area is permitted to be erected, the applicant must submit design plans to the commissioner of public works for approval and must comply with all requirements contained in Article VII of Chapter 138 of the Code of Ordinances. All permit requests shall be reviewed by the urban design commission as is required by this Code. The commissioner of public works shall not issue a permit until the permit application has been reviewed by the urban design commission pursuant to

this Code. Each application must be approved by the commissioner of public works as to location and design and a permit issued before an outdoor dining area is erected.

(k) *Indemnification.* All permit holders for outdoor dining areas located within the city shall at all times assume all risks for the outdoor dining areas and shall indemnify and hold harmless the city against all losses or damages resulting from or alleged to have resulted from the existence, maintenance or any other aspect of the outdoor dining areas.

SECTION 3: That all ordinances or parts of ordinances in conflict herewith are hereby repealed.